A

POH CHEE HONG

v.

BEN TRADING (MALAYSIA) SDN BHD

B

HIGH COURT MALAYA, MELAKA
LOW HOP BING J
[APPLICATION FOR JUDICIAL REVIEW
NO: MT1-13-1-2003]
9 OCTOBER 2006

C

ADMINISTRATIVE LAW: *Judicial review - Certiorari - To quash award handed down by Industrial Court - Whether Chairman committed jurisdictional errors - Whether findings illogical and perverse - Whether there was a fundamental flaw in decision making process - Whether*
D *award free from jurisdictional error*

LABOUR LAW: *Employment - Dismissal - Disciplinary charges - Whether employee found guilty on disciplinary charges which were vague and void ab initio - Whether dismissal with just cause and excuse - Whether there was a fundamental flaw in decision making process -*
E *Whether award handed down free from jurisdictional error*

This substantive notice of motion for judicial review by way of *certiorari* was filed by the applicant ('the employee') who sought, *inter alia*, to quash award no. 1069/2002 handed down by the
F Chairman of the Industrial Court in which his claim against the first respondent ('the employer') was dismissed. The employee was employed as an area sales executive by the employer when he was dismissed on two disciplinary charges *viz*. failure to obey instructions and failure to submit daily sales reports in the absence
G of the salesmen in his territory ('the disciplinary charges'). The employee brought his dismissal to the Industrial Relations Department and the Minister referred the matter to the Industrial Court, under s. 20(3) of the Industrial Relations Act 1967. After a full hearing, the Chairman of the Industrial Court found that the
H employer had established the disciplinary charges against the employee and that the employee had been dismissed with just cause and excuse. The employee thus alleged that the Chairman had committed jurisdictional errors and acted and/or acted without or in excess of jurisdiction. It was the submission of the employee
I that (1) he was found guilty on the disciplinary charges which were vague and void *ab initio*; (2) that the Chairman had illogically and perversely dealt with the disciplinary charges together; (3) that

the employer had failed to produce evidence of the daily sales report and the directive that it was the employee's duty to prepare those reports; (4) the employee sought to justify non-compliance with the employer's instructions to submit the daily sales reports as that would amount to his acceptance of a demotion from the position of sales executive to that of a salesman and that the employer's letter dated 2 May 1999 setting out the job responsibilities of the sales executive would not apply as the salesman Robert was not on leave but had resigned and (5) the issue of constructive dismissal was not pleaded in the employer's statement in reply and so its consideration by the chairman constituted a jurisdictional error.

Held (dismissing the application):

(1) The chairman had arrived at a specific finding of fact that the employee's failure to submit the daily sales reports constituted failure to obey instructions and concluded that the employer had proved on a balance of probabilities that the employer had proved the disciplinary charges resulting in the employee's dismissal with just cause or excuse. The employee had been afforded every opportunity to defend himself. That finding was neither illogical or perverse. In the circumstances, this court was unable to find any fundamental flaw in the decision making process of the chairman in dealing with the disciplinary charges together. (para 37)

(2) Instructions by the employer to the employee to submit the daily sales reports were contained in the employee's first warning letter dated 14 October 1997 issued to the employee who had admitted receiving the letter. That was followed by two other warning letters pertaining to the same subject matter. There was also evidence that during the annual sales meeting chaired by the general manager at a hotel in Port Dickson in December 1997, the sales manager had also given instructions to the employee who had also admitted that he was supposed to do the daily sales report in the absence of the salesmen in his area and that he had not prepared such reports. This finding of fact was adequately supported by evidence. It was a reasonable finding which could not be said to be against the weight of evidence. (paras 41 & 42)

(3) The employer had instructed the employee to relief the salesman 'on leave etc.' The specific inclusion of the word 'etc' or 'et cetera' in full would certainly connote other unspecified situations including *eg*, when a salesman has resigned, as in the instant case, so that the employee has the duty to stand in by way of relief *ie*, to replace the salesman on leave or was absent. So long as the salesman was on leave or was for any other reason unavailable or absent, then the employee had to relief the salesman whose responsibilities include the submission of the daily sales reports. The employee's admitted non-compliance therewith would certainly constitute failure to obey them. (para 52)

(4) The decision-making process of the chairman did not involve the consideration of an unpleaded issue as submitted for the employee. The issue of constructive dismissal was actually raised by the employee in which he had cited *Lotteries Corporation (Sabah) Sdn Bhd Sabah v. Vincent Lee, Sabah*. As this issue had been initiated and relied upon by the employee herein, it was only fitting and proper for the chairman, whose award was the subject matter of the instant application, to deliberate and give his views thereon. The decision making process was beyond any reproach. The award was free from any jurisdictional error. (paras 59 & 60)

Case(s) referred to:

Associated Pan Malaysia Cement Sdn Bhd v. Ramdali Gulam Mohammad [2001] ILR 178 ***(refd)***

Associated Provincial Picture Houses Ltd v. Wednesbury Corp [1948] 1 KB 223 ***(refd)***

Council of Civil Service Unions & Ors v. Minister for the Civil Service [1985] AC 374 ***(refd)***

Dreamland Corporation (M) Sdn Bhd v. Choong Chin Sooi & Anor [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39 SC ***(refd)***

Esso Production Malaysia Inc v. Maimunah Ahmad & Anor [2002] 3 CLJ 242 CA ***(refd)***

Gardenia Sales & Distribution Sdn Bhd v. Tee Che Kiong [2002] 3 ILR 1075 ***(refd)***

Goon Kwee Phoy v. J & P Coats (M) Bhd [1981] 2 MLJ 129 ***(refd)***

Healthcare Medical Screening Centre (M) Sdn Bhd v. Raymund Dominic Ignatius Louis [1997] 3 ILR 879 ***(refd)***

Inter State Packages Sdn Bhd v. Tan Siew Khuan [1998] 3 ILR 661 ***(refd)***

JT International Trading Sdn Bhd v. Rahim Hamzah & Anor [2003] 2 ILR 442 ***(refd)***

Lim Siew Hong v. Contraves Advances Devices Sdn Bhd & Anor [2006] 2 AMR 770 ***(refd)***
Lotteries Corporation (Sabah) Sdn. Bhd. Sabah v. Vincent Lee, Sabah [1991] 1 ILR 554 ***(refd)***
Milan Auto Sdn Bhd v. Wong Seh Yen [1995] 4 CLJ 449 FC ***(refd)***
MUI Bank Bhd Johor v. Tee Puat Kuay [1993] 4 CLJ 69 HC ***(refd)***
Murata Electronics (M) Sdn Bhd v. Vadivellu Muniandy [1997] 3 ILR 897
Palm Resort Berhad v. Tan Chey Bou [1998] 2 ILR 354 ***(refd)***
Philips Malaysia Sdn Bhd v. Loke Kwok Lim [1996] 1 ILR 327 ***(refd)***
R Rama Chandran v. Industrial Court of Malaysia & Anor [1997] 1 CLJ 147 FC ***(refd)***
Schmidt Scientific Sdn Bhd v. Valerie Wong Ngan Kuan [1995] 2 ILR 482 ***(dist)***
Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union [1995] 2 CLJ 748 CA ***(refd)***
Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd and Another Appeal [1995] 3 CLJ 344 FC ***(refd)***

Legislation referred to:
Industrial Relations Act 1967, s. 20(3)

For the applicant - WS Goh; M/s WS Goh & Assoc
For the 1st respondent - Andrew Saw (Edmund Saw with him); M/s Ng Yook Woon, Andrew TC Saw & Co

Reported by Suhainah Wahiduddin

JUDGMENT

Low Hop Bing J:

Application

[1] This substantive notice of motion for judicial review by way of *certiorari* was filed by the applicant ("the employee") who seeks, *inter alia,* to quash award No. 1069/2002 handed down by the learned chairman of the Industrial Court on 26 December 2002 in case No. 5/4-790/98 in which his claim against the first respondent ("the employer') was dismissed after a full hearing.

Factual Background

[2] The factual background unfolded hereunder is substantially uncontroverted.

[3] The employee was employed as an area sales executive by the employer from 16 January 1988 until 27 April 1998 when he was dismissed on two disciplinary charges *viz*. failure to obey instructions and failure to submit daily sales reports in the absence of the salesmen in his territory ("the disciplinary charges"). On the date of his dismissal, his pay was RM2,150.

[4] The employee was in charge of the business activities of the employer's southern region and had to ensure that the two salesmen under his supervision achieve their monthly sales and collection budgets, to relief salesmen on leave, etc, develop new business, ensure good merchandising, assist in new product listing, provide market feedback and information to the general manager.

[5] As the employer did not have a branch in Melaka, the employee was operating from his house. The employer has reposed in the employee a high degree of trust and confidence.

[6] On 17 April 1998, the employee was charged with the disciplinary charges.

[7] A domestic inquiry was held on 24 April 1998 but the employee had refused to attend, as a result of which the employee was found guilty of the disciplinary charges and dismissed *vide* the employer's letter dated 27 April 1998.

[8] The employee has brought his dismissal to the Industrial Relations Department and the Minister has referred the matter to the Industrial Court, under s. 20(3) of the Industrial Relations Act 1967.

[9] After a full hearing, the learned chairman of the Industrial Court found that the employer had established the disciplinary charges against the employee and that the employee had been dismissed with just cause or excuse. The employee now alleged that the learned chairman had committed jurisdictional errors and/or acted without or in excess of jurisdiction.

Common Ground

[10] The parties and their respective learned counsel agreed to adopt the common ground that the duty of the learned chairman is to inquire into the grounds of dismissal all over again in order to ascertain whether the employer has discharged the burden of proving that the employee was in fact guilty of the misconduct contained in the disciplinary charges: see eg, *Goon Kwee Phoy v*.

J. & P. Coats (M) Bhd. [1981] 2 MLJ 129 FC per Raja Azlan Shah CJ(M) (now HRH the Sultan of Perak); *Dreamland Corporation (M) Sdn. Bhd. v. Choong Chin Sooi & Anor.* [1988] 1 CLJ 1; [1988] 1 CLJ (Rep) 39 SC per Wan Suleiman SCJ (as he then was); *Wong Yuen Hock v. Syarikat Hong Leong Assurance Sdn Bhd and Another Appeal* [1995] 3 CLJ 334 FC per Mohd Azmi FCJ (as he then was); and *Milan Auto Sdn Bhd v. Wong Seh Yen* [1995] 4 CLJ 449 FC per Mohd Azmi FCJ (as he then was).

Governing Principles

[11] At this juncture, it is appropriate for me to set out the principles governing the grounds for sustaining a substantive notice of motion to challenge a decision-making process by way of *certiorari*, as follows:

(1) It is neither an appeal nor a review of the decision itself, but a review of the decision-making process of the tribunal to see if there are errors of law on the face of the record;

(2) It is neither feasible nor desirable to attempt an exhaustive definition of what amounts to an error of law, for the categories of such an error are not closed; and an error may be disclosed if the decision-maker eg,:

(a) asks himself the wrong question;

(b) takes into account irrelevant considerations;

(c) omits to take into account certain relevant considerations (an Anisminic error);

(d) misconstrues the terms of the relevant statute; or

(e) misapplies or misstates a principle of general law.

(per Gopal Sri Ram JCA in *Syarikat Kenderaan Melayu Kelantan Bhd v. Transport Workers Union* [1995] 2 CLJ 748 at p 765 f-g CA);

(3) In process or substance, an impugned decision is flawed on ground of:

(a) illegality, meaning that the decision must be based on law and the decision-maker must understand directly the law that regulates his decision-making power and must give effect to it, and whether he has or not is par excellence a justiciable question;

A (b) irrationality meaning "Wednesbury unreasonableness", so outrageous in its defiance of logic or of accepted moral standards that no sensible person who had applied his mind to the question to be decided could have arrived at it, as enunciated in *Associated Provincial Picture Houses Ltd* B *v. Wednesbury Corp* [1948] 1 KB 223;

(c) procedural impropriety covering failure:

(i) to observe basic rules of natural justice;

C (ii) to act with procedural fairness;

(iii) to observe procedural rules that are expressly laid down in the legislative instrument by which its jurisdiction is conferred, even where such failure does not involve any D denial of natural justice; and

(4) possibly, proportionality.

(per Edgar Joseph Jr FCJ in *R Rama Chandran v. Industrial Court of Malaysia & Anor.* [1997] 1 CLJ 147 at pp 172b-173b; E referring to the judgment of Lord Diplock in *Council of Civil Service Unions & Ors v. Minister for the Civil Service* [1985] AC 374.)

(See my judgment in *Lim Siew Hong v. Contraves Advances Devices* F *Sdn Bhd & Anor* [2006] 2 AMR 770 at pp 773-775).

Legality Of The Disciplinary Charges

[12] Employee's learned counsel Mr. WS Goh submitted that the employee was found guilty on the disciplinary charges which were G vague and void *ab initio*, and so his dismissal was without just cause or excuse, seeking support, *inter alia*, in:

(1) *Esso Production Malaysia Inc v. Maimunah Ahmad & Anor* [2002] 3 CLJ 242 CA;

H (2) *Associated Pan Malaysia Cement Sdn. Bhd. v. Ramdali Gulam Mohammad* [2001] ILR 178; and

(3) *Healthcare Medical Screening Centre (M) Sdn. Bhd. v. Raymund Dominic Ignatius Louis* [1997] 3 ILR 879.

I Employer's learned counsel Mr. Edward Saw (Mr. Edmund Saw with him) disagreed and relied on, *inter alia*, *Gardenia Sales & Distribution Sdn Bhd v. Tee Che Kiong* [2002] 3 ILR 1075.

[13] Having regard to the above submissions, it is appropriate for me to embark on an analysis of the authorities which set out the circumstances in which disciplinary charges had been held to be vague and void *ab initio*.

[14] First, in *Esso Production Malaysia Inc*, *supra*, the employee appeared in the employer's board of inquiry on two charges *viz* receiving RM400 from the employer's contractors in return for assistance rendered in relation to payment of that contractor's invoice, in contravention of the employer's Gift and Entertainment Policy and Conflict of Interest Policy; and the concealment and failure to disclose to the employer the existence of irregular business practices and/or violation by the employer. Those charges which were criminal or at least semi-criminal in nature did not state the material particulars *viz*. the date, time and place of the alleged offences. At pp 248 f-g; 249 and 250a, Abdul Kadir Sulaiman JCA (later FCJ) held, *inter alia*, that those charges were bad in law for want of particulars and were void *ab initio*.

[15] The above Court of Appeal judgment was followed by the Industrial Court in *JT International Trading Sdn Bhd v. Rahim Hamzah & Anor* [2003] 2 ILR 442 where the learned chairman Ahmadi Asnawi held that the charges, of abetting and colluding another person by creating falsified cash sales bills to cover that other person's unauthorised activities, were criminal or semi-criminal in nature. In the absence of the date and time of the commission of the offences, and the manner of the alleged falsification and collusion, the charges were held to be void *ab initio*.

[16] It is to be noted that in the above two authorities cited for the employee, the crux of the charges contained criminal or quasi-criminal offences, whereas the disciplinary charges against the employee herein merely consisted of non-criminal elements.

[17] In any event, the absence of the place, date and time of the commission of the offence in a criminal or semi-criminal charge does not *ipso facto* prevent an Industrial Court from exercising the jurisdiction to enquire into the merits of whether a dismissal is without just cause or excuse.

[18] In *Gardenia Sales & Distribution*, *supra*, a domestic enquiry was held in which the employee faced two charges *viz* failure to take action on gambling activities taking place in the company's house; and the employee himself was involved in gambling

activities with his subordinates. These activities are criminal or semi-criminal in nature. No time, date or place of the alleged gambling activities were stated in the charges. Although the learned chairman Zura Yahya followed *Esso Production Malaysia Inc, supra,* and held that the charges were defective for failure to state material particulars, she added that the Industrial Court may not automatically find that the employee's dismissal was without just cause or excuse, as it is still within her jurisdiction to look into the merits of the case.

[19] In the instant application, it is necessary for me to analyse the disciplinary charges to determine whether they are vague and void *ab initio*.

[20] It is significant to note that the employer's letter dated 17 April 1998 notifying the employee of the domestic enquiry did specifically refer to the employer's three previous warning letters to the employee who had chosen to ignore them. In my view, these three warning letters and the disciplinary charges must be read conjunctively and not disjunctively or in isolation. The contents of these warning letters must now be considered.

[21] In the first warning letter dated 14 October 1997, the employer had reminded the employee that the sales and collections in the area for which he was responsible were deplorable and requested the employee to take immediate action to improve, especially the collections of the debtors overdue for 90 to 120 days, with particulars of the specific amount and the due date for collection ie, on or before 25 October 1997, all of which had been tabulated thereunder.

[22] As the employee has not complied with the due date for collection, the employer had to issue the second warning letter dated 2 March 1998, specifically giving the employee two days to revert to the employer, failing which disciplinary action would be taken against the employee.

[23] *Vide* the third and final warning letter dated 16 March 1998, the employer informed the employee of his failure to make any effort to improve his performance, and noted that despite several calls to him, there had been no submission of daily sales reports commencing from the date of resignation of one Robert who was one of the salesmen in the employee's territory. Meanwhile, the employer gave a final warning to the employee to improve his work performance.

[24] Reading the employer's three warning letters and the disciplinary charges in their entirety, it is abundantly clear that the employer has set out all the material particulars.

[25] I am therefore unable to find any merit in the above submission for the employee.

Dealing With The Charges Together

[26] It was submitted for the employee that the learned chairman had illogically and perversely dealt with the disciplinary charges together, in which case the employee was unable to defend himself.

[27] The contention for the employer was that the charges concern one and the same subject matter.

[28] Having regard to the above submissions, I am of the view that the issue for determination is whether the decision-making process adopted by the learned chairman was illogical or perverse.

[29] In this connection, while it is true that the learned chairman was of the view that the disciplinary charges were inter-related and so had dealt with them together, I am unable to find any support for the employee's submission that the employee was unable to defend himself at the hearing before the learned chairman.

[30] Although there were two disciplinary charges in form, there was only one charge in substance ie, failure to obey instructions by reason of the employee's failure to submit daily sales reports. Hence, there is nothing illogical or perverse in dealing with the same subject matter together.

[31] The employee was given the opportunity to examine the documents produced by the employer at the hearing where the witnesses *viz* the general manager and the national sales manager were subject to cross-examination by the employee's learned counsel.

[32] After hearing the employer's case, the learned chairman extended the opportunity to the employee to present his case through his learned counsel. The employee then testified on oath.

[33] Upon an evaluation of the respective evidence as a whole, the learned chairman had come to a specific finding of fact that the employer had *vide* the first warning letter dated 14 October

1997 given instructions to the employee to take immediate action to improve the sales and collections in his area with a specific reference to the 12 accounts listed therein, and to provide feedback daily.

[34] The employee's version was that the economic downturn had resulted in poor collections while the depreciation of the Ringgit against the US Dollar has reduced the sales. The employee had not given his reasons for the failure to provide feedback to the employer although he was duty bound to do so.

[35] The employee's reason for not submitting the daily sales reports was that it was not his duty but that of the salesman. However, he admitted that as an area sales executive, he has to give market feedback and information to the general manager, and he would be accountable for his salesmen's failure to perform. In the face of the employee's failure to give the feedback, the employer issued a second warning letter dated 2 March 1998 and the third and final letter dated 16 March 1998. He admitted having received the first and the second warning letters against which he has never protested. He denied having received the third warning letter. No feedback was given by the employee, who as a matter of fact has admitted that the instructions given to him to submit the daily sales reports were reasonable.

[36] His complaint of victimisation in that the employer had a hidden agenda to get rid of him, allegedly in the absence of any evidence, was rejected by the learned chairman.

[37] The learned chairman had arrived at a specific finding of fact that the employee's failure to submit the daily sales reports constituted failure to obey instructions and concluded that the employer has proved on a balance of probabilities that the employer had proved the disciplinary charges resulting in the employee's dismissal with just cause or excuse. The employee had been afforded every opportunity to defend himself. In my view that finding is neither illogical nor perverse. In the circumstances I am unable to find any fundamental flaw in the decision-making process of the learned chairman in dealing with the disciplinary charges together.

Production Of Daily Sales Report

[38] It was submitted for the employee that the employer had failed to produce evidence of the daily sales reports and the directive that it was the employee's duty to prepare those reports. *Schmidt Scientific Sdn. Bhd. v. Valerie Wong Ngan Kuan* [1995] 2 ILR 482 was cited in support.

[39] The employer took the stand that the employee had been instructed to submit the daily sales reports which the employee had failed to do.

[40] In my judgment, the question of whether the employee had been instructed by the employer to submit the daily sales reports in the absence of the salesmen in his area is one of fact which is to be ascertained by reference to the evidence adduced before the learned chairman.

[41] It is the finding of the learned chairman that such instructions were contained in the employee's first warning letter dated 14 October 1997 issued to the employee who had admitted receiving the letter. That was followed by two other warning letters pertaining to the same subject matter.

[42] There was also evidence that during the annual sales meeting chaired by the general manager at a hotel in Port Dickson in December 1997, the sales manager also gave instructions to the employee who had also admitted that he was supposed to do the daily sales report in the absence of the salesmen in his area and that he did not prepare such reports.

[43] Upon a proper perusal of the notes of evidence adduced before the learned chairman, I am of the view that this finding of fact is adequately supported by evidence. It is a reasonable finding which cannot be said to be against the weight of evidence.

[44] As the employee had not submitted the daily sales reports to the employer, how can the employer be reasonably expected to produce them as evidence?

[45] In *Schmidt Scientific Sdn. Bhd., supra,* the employee was given an official warning letter, warning her of severe disciplinary action if she fails to report to her sales manager on her daily activities. The employee went to see the division manager for clarification, but failed to get any and proceeded to see the managing director who, instead of explaining to her, asked her to resign. When she

refused to resign, she was handed a letter of termination which failed to disclose the reason(s) for her dismissal. She testified that she was only required to produce activity reports when she went outstation and that she had prepared some daily reports. The issues for determination were whether the employee had in fact committed the misconduct complained of and whether the nature and content of the misconduct would constitute just cause or excuse for the dismissal. The learned chairman Siti Saleha bt Dato Sheikh Abu Bakar held, *inter alia*, that the employer had failed to establish on a balance of probabilities the real reason for dismissing the employee and hence the dismissal was made without just cause or excuse.

[46] As the facts there are clearly distinguishable from those in the instant application, I am unable to accept the employee's submission based on this authority.

Demotion

[47] The employee sought to justify non-compliance with the employer's instructions to submit the daily sales reports as that would amount to his acceptance of a demotion from the position of sales executive to that of a salesman and that the employer's letter dated 2 May 1999 setting out the job responsibilities of the sales executive would not apply as the salesman Robert was not on leave but had resigned, referring to *Philips Malaysia Sdn. Bhd. v. Loke Kwok Lim* [1996] 1 ILR 327.

[48] The employer responded that the employee's submission was nothing more than an afterthought, as he had never protested to the employer's instructions in the first place.

[49] In my judgment, the employee's submission herein would run counter to his earlier submission that the employer had never given him the instructions. His justification for non-compliance with the employer's instructions presupposes the existence of these instructions.

[50] The respective submissions herein made it clear that the employer had instructed the employee to relief the salesman "on leave, etc". The dispute is whether the words "on leave, etc" would include the salesman who had resigned.

[51] Employee's learned counsel submitted that these words would limit the situation to a salesman on leave but does not include one who has resigned as in the case of Robert here, while the employer relied on the additional word "etc" to include the salesman's resignation.

[52] In my judgment, the employer's submission is more consistent with the use of the words "on leave, etc". To state the obvious, "etc" means "and so on" or "and so forth". The specific inclusion of the word "etc" or "et cetera" in full would certainly connote other unspecified situations including eg, when a salesman has resigned, as in the instant case, so that the employee has the duty to stand in by way of relief ie, to replace the salesman on leave or is absent. So long as the salesman is on leave or is for any other reason unavailable or absent, then the employee has to relief the salesman whose responsibilities include the submission of the daily sales reports. The employee's admitted non-compliance therewith would certainly constitute failure to obey them.

[53] In *Philips Malaysia, supra,* cited for the employee, the relevant facts revealed, *inter alia,* that the claimant there was not responsible for preparing the report which was indeed the responsibility of the claimant's subordinates. The learned chairman Tan Kim Siong held that the claimant had been constructively dismissed and the dismissal was without just cause or excuse.

[54] By contrast, in the instant application the learned chairman's finding of facts revealed that the job responsibilities of the employee included the submission of the daily sales report. I am unable to identify any error in this finding.

Constructive Dismissal

[55] It was argued for the employee that the issue of constructive dismissal was not pleaded in the employer's statement in reply and so its consideration by the learned chairman constituted a jurisdictional error, citing:

(1) *MUI Bank Bhd Johor v. Tee Puat Kuay @ Tee Puat Kway* [1993] 4 CLJ 69 HC;

(2) *R Rama Chandran v. The Industrial Court of Malaysia & Anor* [1997] 1 CLJ 147 FC;

(3) *Inter State Packages Sdn. Bhd. v. Tan Siew Khuan* [1998] 3 ILR 661;

(4) *Murata Electronics (M) Sdn. Bhd. v. Vadivellu Muniandy* [1997] 3 ILR 897; and

(5) *Palm Resort Berhad v. Tan Chey Bou* [1998] 2 ILR 354.

[56] The employer supported the learned chairman's award and submitted that there was no such error.

[57] For purposes of completeness, I shall now consider the authorities cited for the employee.

[58] With the utmost respect to the employee's learned counsel, I am of the view that only two of the above five authorities are relevant to the employee's contention. These two authorities are *Murata Electronics, (M) Sdn. Bhd., supra;* and *Palm Resort Berhad, supra*. They have set out the established principle of pleadings which are also of general application in ordinary civil litigation in a court of law ie, parties are bound by pleadings and a party can only rely on specifically pleaded issues, facts and circumstances.

[59] Upon a proper perusal of the learned chairman's award, I find that the issue of constructive dismissal was actually raised by the employee's learned counsel at p. 10 of his written submission in which he had cited *Lotteries Corporation (Sabah) Sdn. Bhd. Sabah v. Vincent Lee, Sabah* [1991] 1 ILR 554 to the learned chairman, who has thereupon given due consideration to that authority and concluded that the employee's allegations of victimization by the employer pursuant to a hidden agenda was baseless and an afterthought.

[60] The decision-making process of the learned chairman did not involve the consideration of an unpleaded issue as submitted for the employee. *Lotteries Corporation, supra,* is indeed an award grounded on constructive dismissal. As this issue has been initiated and relied upon by the employee's learned counsel herein, it is only fitting and proper for the learned chairman, whose award is now the subject matter of the instant application, to deliberate and give his views thereon. I find this decision-making process beyond any reproach.

Conclusion

[61] On the foregoing grounds, I am of the view that the award is free from any jurisdictional error. I therefore dismiss this application with costs.